

03-526 SCHRIRO v. SUMMERLIN

Ruling below: CA 9, 341 F.3d 1082

QUESTIONS PRESENTED FOR REVIEW:

In *Ring v. Arizona*, 536 U.S. 584, 589 (2002), this Court held that the Sixth Amendment jury trial guarantee extends to the determination of any fact, other than a prior conviction, that increases the maximum punishment for first-degree murder from life imprisonment to death. In the instant case, the United States Court of Appeals for the Ninth Circuit held that the rule announced in *Ring* should be applied retroactively to cases on collateral review.

1. Did the Ninth Circuit err by holding that the new rule announced in *Ring* is substantive, rather than procedural, and therefore exempt from the retroactivity analysis of *Teague v. Lane*, 489 U.S. 288 (1989) (plurality)?
2. Did the Ninth Circuit err by holding that the new rule announced in *Ring* applies retroactively to cases on collateral review under *Teague's* exception for watershed rules of criminal procedure that alter bedrock procedural principles and seriously enhance the accuracy of the proceedings?
- ~~3. Did the Ninth Circuit err by applying *Ring* notwithstanding a "prior conviction" aggravating circumstance that, under *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), need not be found by the jury?~~

CERT. GRANTED: 12/1/03

Limited to questions 1 and 2 presented by the petition.